

LEGISLATIVE BILL 434

Approved by the Governor April 26, 1995

Introduced by Wehrbein, 2

AN ACT relating to agriculture; to amend section 49-1499, Reissue Revised Statutes of Nebraska, and section 2-3311, Revised Statutes Supplement, 1994; to authorize a private sector qualified state soybean board for a federal program; to provide duties for the Soybean Development, Utilization, and Marketing Board, the Director of Agriculture, the Auditor of Public Accounts, and the State Treasurer; to eliminate the Nebraska Soybean Resources Act, a board, and a fund; to transfer funds; to provide operative dates; to repeal the original sections; to outright repeal sections 2-3301, 2-3303 to 2-3310, and 2-3315 to 2-3324, Reissue Revised Statutes of Nebraska, section 2-3302, Revised Statutes Supplement, 1994, and section 2-3311, Revised Statutes Supplement, 1994, as amended by section 8 of this legislative bill; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature finds that:

(1) The federal government has enacted the Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., which provides for the establishment of a national program of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand existing domestic and foreign markets and uses for soybeans and soybean products;

(2) To carry out the program, assessments are made on the first marketing of soybeans. The federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., permits a qualified state soybean board to collect such assessments from producers. A qualified state soybean board may be a state agency or an entity governed by soybean producers;

(3) In 1975 the Nebraska Legislature enacted the Nebraska Soybean Resources Act which created the Soybean Development, Utilization, and Marketing Board to develop, carry out, and participate in programs of research, education, market development, and promotion of the soybean industry. The board is an agency of the state and carries out the duties of a qualified state soybean board for Nebraska, including collecting assessments as described in subdivision (2) of this section and depositing the qualified state soybean board's portion of such assessments in the Soybean Development, Utilization, and Marketing Fund;

(4) A state may have only one qualified state soybean board under the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq.;

(5) There would be many advantages in using a private nonprofit corporation rather than a state agency to carry out the purposes of the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., including expediting business matters, eliminating duplication in accounting and auditing procedures, simplifying the appropriations process, and streamlining the disbursement of funds. The advantages provided to the public by operating as a state agency can be obtained by a private nonprofit corporation. A private nonprofit corporation can include in its bylaws procedures for open meetings, public notice of corporate programs and decisions, access to records, and a means by which a producer of soybeans has the opportunity to offer his or her ideas and suggestions relative to corporate policy;

(6) There are adequate protections provided by the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., and the rules and regulations promulgated under the act to ensure that the assessments made are used for the purposes of the act. These provisions apply to the qualified state soybean board regardless of whether the board is a state agency or a private nonprofit corporation;

(7) All money in the Soybean Development, Utilization, and Marketing Fund comes from assessments on the marketing of soybeans and none of the money comes from tax funds;

(8) All equipment, furniture, and other property of the Soybean Development, Utilization, and Marketing Board was purchased with money from the fund and not with tax funds; and

(9) Continuity to the soybean industry development program in Nebraska is important, and if changes in the program occur at the federal level, the Legislature can respond with appropriate legislation.

Sec. 2. (1) It is the intent of the Legislature to encourage the formation of a private nonprofit corporation which meets the criteria of the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., as a qualified state soybean board to continue Nebraska's soybean industry development program and to take over from the Soybean Development, Utilization, and Marketing Board the duties of the qualified state soybean board under the federal act.

(2) It is the intent of the Legislature that a smooth transition of Nebraska's soybean development program from the Soybean Development, Utilization, and Marketing Board to the private nonprofit corporation be made.

Sec. 3. (1) The private nonprofit corporation described in section 2 of this act seeking designation as a qualified state soybean board pursuant to the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., shall have initial articles of incorporation and bylaws which include provisions providing that:

(a) The members of the Soybean Development, Utilization, and Marketing Board serving immediately prior to October 1, 1995, become the initial directors of the corporation and shall serve until their terms would have expired pursuant to the Nebraska Soybean Resources Act;

(b) Except for the election of an at-large member who shall be elected by the board, elections of subsequent members of the board of directors of the corporation shall be by districts to provide adequate representation of producers and such elections will be conducted by the Cooperative Extension Service of the University of Nebraska pursuant to a contract with the corporation, which contract provides for use of absentee ballots in the election;

(c) Any employee of the Soybean Development, Utilization, and Marketing Board immediately prior to October 1, 1995, becomes, at the option of the employee, an employee of the corporation on October 1, 1995;

(d) The financial records of the corporation are audited annually by a certified public accountant in accordance with any requirements of the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., and any regulations under such act;

(e) The duties of the corporation are the duties provided for a qualified state soybean board under the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., or any substantially similar successor federal act which provides for an assessment on the marketing of soybeans for purposes similar to the purposes provided in the federal Soybean Promotion, Research, and Consumer Information Act of 1990;

(f) The corporation assumes all existing and future liabilities of the Soybean Development, Utilization, and Marketing Board;

(g) The expenditure of any funds paid or transferred to the corporation will be used in a manner consistent with the original purposes of the Nebraska Soybean Resources Act;

(h) The corporation submits quarterly reports to the Auditor of Public Accounts detailing the expenditures of funds received or transferred to it from the state until all the funds are expended; and

(1) Any amendment to the articles and bylaws of the corporation shall not become effective until approved by a two-thirds vote of the directors of the private nonprofit corporation.

(2) The Soybean Development, Utilization, and Marketing Board shall:

(a) Utilize the existing appropriation to the Soybean Development, Utilization, and Marketing Fund to carry out its duties under the Nebraska Soybean Resources Act through September 30, 1995, and may contract with the private nonprofit corporation for transitional programs and services in addition to the contracts authorized under section 2-3311;

(b) Contract for the transfer of furniture, equipment, and other property from the board to the corporation; and

(c) Transfer all books, files, and records from the board to the corporation.

Sec. 4. (1) If a private nonprofit corporation as described in section 2 of this act (a) is formed, (b) submits to the Director of Agriculture on or before August 1, 1995, copies of its articles of incorporation and bylaws which the director determines comply with subsection (1) of section 3 of this act, (c) provides to the director written documentation showing that the corporation has been certified by the United Soybean Board as a qualified state soybean board, and (d) provides to the Director of Administrative Services a contractual guarantee that the corporation accepts and agrees to pay out of any funds available to it all

existing and future liabilities of the Soybean Development, Utilization, and Marketing Board which have not been extinguished prior to October 1, 1995, including unpaid bills and claims for goods and services, claims for refunds of fees and assessments, accrued salaries and benefits, unemployment compensation claims, and claims relating to wrongful action, and upon compliance with sections 2 to 4 of this act, the transfer of Nebraska's soybean industry development program from the Soybean Development, Utilization, and Marketing Board to the private nonprofit corporation shall be arranged.

(2) The Director of Agriculture shall complete the review of the articles and bylaws not later than September 1, 1995. Upon determining that the articles and bylaws contain the items required by section 3 of this act, the director shall so notify the corporation in writing, shall send a copy of the articles and bylaws to the Soybean Development, Utilization, and Marketing Board, and shall notify the Auditor of Public Accounts to conduct the audit described in section 5 of this act.

Sec. 5. Upon notification by the Director of Agriculture, the Auditor of Public Accounts shall, as of September 30, 1995, conduct or cause to be conducted an audit and examination of all financial and accounting records of the Soybean Development, Utilization, and Marketing Board. Certified copies of the audit shall be filed with the Auditor of Public Accounts, the Director of Agriculture, and the private nonprofit corporation as described in sections 2 and 3 of this act.

Sec. 6. On October 1, 1995, if all provisions of sections 2 to 4 of this act have been complied with, the private nonprofit corporation shall become the qualified state soybean board for Nebraska for the purposes of the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq.

Sec. 7. The State Treasurer shall transfer any funds remaining in or accruing to the Soybean Development, Utilization, and Marketing Fund on or after October 1, 1995, to the private nonprofit corporation. Such transfers shall be in payment of any contract between the Soybean Development, Utilization, and Marketing Board and the corporation which provides for the corporation to carry out the responsibilities and programs of the board under the Nebraska Soybean Resources Act. The State Treasurer shall make such transfers only if sections 2 to 5 of this act have been complied with.

Sec. 8. Section 2-3311, Revised Statutes Supplement, 1994, is amended to read:

2-3311. The duties and responsibilities of the board shall be prescribed in the authority for the soybean program and to the extent applicable shall include the following:

(1) To develop and direct any soybean development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and prototype development for the production of alcohol;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the commodity program;

(3) To adopt and promulgate reasonable rules and regulations;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the commodity program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the program;

(6) To establish a means whereby any grower of soybeans has the opportunity at least annually to offer his or her ideas and suggestions relative to board policy for the coming year;

(7) To authorize the expenditure of funds and to contract with any person, including a private nonprofit corporation, and contracting of expenditures to conduct proper activities of the program;

(8) To bond the treasurer and such other persons necessary to insure adequate protection of funds;

(9) To keep minutes of its meetings, and other books and records which will clearly reflect all of the acts and transactions of the board, and to keep these records open to examination by any grower-participant during normal business hours;

(10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence legislation; and

(11) To make refunds for overpayments of fees.

Sec. 9. Section 49-1499, Reissue Revised Statutes of Nebraska, is amended to read:

49-1499. An individual designated in section 49-1493 or an official or employee of the executive branch of state government, who, in the discharge

of his or her official duties, would be required to take any action or make any decision that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(1) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict, and if he or she is a member of the Legislature and will not abstain from voting, deliberating, or taking other action on the matter, the statement shall state why, despite the potential conflict, he or she intends to vote or otherwise participate; and

(2) Deliver a copy of the statement to the commission and:

(a) If he or she is a member of the Legislature, deliver a copy of the statement to the Speaker of the Legislature who shall cause the statement to be filed with the Clerk of the Legislature to be held as a matter of public record. He or she may abstain from voting, deliberating, or taking other action on the matter on which the potential conflict exists, in which case he or she may have the reasons for the abstention recorded in the journal or minutes of the Legislature. Nothing in this section shall be construed to prohibit any member of the Legislature from voting, deliberating, or taking other action on any matter that comes before the body; or

(b) If he or she is not a member of the Legislature, deliver a copy of the statement to his or her immediate superior, if any, who shall assign the matter to another or, if he or she has no immediate superior, take such steps as the commission shall prescribe or advise to remove himself or herself from influence over actions and decisions on the matter. This restriction shall not prevent such a person from (i) making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made or (ii) making or participating in the making of a governmental decision if the potential conflict of interest is based upon a business association and the business association exists only as the result of his or her position on a commodity board. A person acting pursuant to subdivision (i) of this subdivision shall report the occurrence to the commission.

For purposes of this section, commodity board shall mean only the Corn Development, Utilization, and Marketing Board, the Nebraska Dairy Industry Development Board, the Grain Sorghum Development, Utilization, and Marketing Board, the Soybean Development, Utilization, and Marketing Board, the Nebraska Wheat Development, Utilization, and Marketing Board, the Dry Bean Commission, the Nebraska Potato Development Committee, and the Nebraska Poultry and Egg Development, Utilization, and Marketing Committee.

Sec. 10. Sections 9, 11, and 13 of this act become operative on October 1, 1995. The other sections of this act become operative on their effective date.

Sec. 11. Original section 49-1499, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 12. Original section 2-3311, Revised Statutes Supplement, 1994, is repealed.

Sec. 13. The following sections are outright repealed: Sections 2-3301, 2-3303 to 2-3310, and 2-3315 to 2-3324, Reissue Revised Statutes of Nebraska, section 2-3302, Revised Statutes Supplement, 1994, and section 2-3311, Revised Statutes Supplement, 1994, as amended by section 8 of this legislative bill.

Sec. 14. Since an emergency exists, this act takes effect when passed and approved according to law.